

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

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**In the Matter of**

**EXTENSION OF COMPUTER RESERVATIONS  
SYSTEMS (CRS) REGULATIONS**

**Notice of Proposed Rulemaking**

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) **Docket OST-2003-14484**  
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**COMMENTS OF UNITED AIR LINES, INC.**

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**DATED:** February 27, 2003

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**INTRODUCTION**

United Air Lines, Inc. ("United") submits the following comments in response to the February 13, 2003 notice proposing to extend -- for the sixth time -- the expiration date of the Department's rules governing computer reservations systems ("CRS"), 14 C.F.R. Part 255.<sup>1/</sup> This latest extension would push back the rules' sunset date by ten months -- from March 31, 2003, to January 31, 2004. United opposes the proposed extension, particularly as applied to the nondiscriminatory booking fee rule<sup>2/</sup> and the mandatory participation rule,<sup>3/</sup> which effectively insulate CRS vendors from competition, thereby driving up carriers' distribution costs at a time when the industry already is struggling to survive in the precarious, post-September 11th economy. If the CRS rules are extended at all -- which United believes would be particularly ill-advised -- the

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<sup>1/</sup> 68 Fed. Reg. 7325 (Feb. 13, 2003).

<sup>2/</sup> 14 C.F.R. § 255.6.

<sup>3/</sup> Id. § 255.7.

booking fee rule and the mandatory participation rule should be excluded from the extension and allowed to sunset on March 31, 2003, as currently scheduled.

### **DISCUSSION**

Since the CRS regulations were initially promulgated nearly 20 years ago, sweeping changes in CRS ownership and dramatic technological innovations (particularly the efflorescence of Internet reservations services) have transformed airline reservations/ticketing arrangements. These changes have rendered the “current” rules, which had been scheduled to sunset more than five years ago, not only obsolete but also harmful to the public interest.

When the rules were adopted in 1984, all but one of the CRS systems in use were owned by individual airlines and the rules were designed to ensure that competing carriers could gain access to these systems on nondiscriminatory terms. Today, none of the systems is owned by an individual airline. As a result, the core objective of the CRS rules -- to ensure that each air carrier has access to key information and ticketing systems owned and controlled by one of its horizontal competitors -- has been rendered moot as individual airlines no longer control competitors’ access to these systems. One unintended consequence of this change in circumstances, however, is that rules originally designed to promote competition now serve primarily to insulate the new owners of the CRS networks from competitive market forces.<sup>4</sup>

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<sup>4</sup> It should be axiomatic that government regulation probably is anticompetitive whenever a regulated industry coalesces to oppose its own deregulation. There is no better evidence that the CRS rules are anticompetitive than the CRS vendors’ support for those rules’ perpetuation and for protraction of the Department’s ongoing review of the rules. Those same vendors, which formerly opposed the rules, have become vocal defenders of the status quo, opposing both elimination of the existing rules, which enable them to charge excessive booking fees, and the

This is particularly true of the booking fee rule and the mandatory participation rule.<sup>5</sup> During the five years in which these rules have been extended, CRS vendors have consistently and systematically increased the booking fees they charge participating air carriers. They have been able to do so without fear of losing participants because the CRS rules limit carriers' basic economic right to negotiate with the suppliers of a service about the terms on which they will purchase that service. As a result, CRS vendors have been shielded from the pricing pressures of a normal, competitive market, and air carriers have had to pay substantially more for CRS services than a competitive market would dictate. These excess costs either erode carrier margins (which have been negative for quite some time) or, when the market permits, are passed on to passengers in the form of higher air fares. Either way, the public interest suffers.

This is not news to the Department, which has proposed to eliminate the mandatory participation and booking fee rules because they adversely affect competition in the CRS industry and harm carriers and consumers. As the Department noted last November, "the mandatory participation rule may unduly limit the ability of individual

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Department's proposal to expand its regulation of the vendors' contractual relationships with travel agents to redress allegedly anticompetitive conduct by the vendors.

<sup>5</sup> The booking fee rule was part of the original CRS rules adopted by the CAB in 1984. 49 Fed. Reg. 32540 (Aug. 15, 1984). The Department added the mandatory participation rule in 1992 as part of its last comprehensive (now 11-years-old) review of the rules. 57 Fed. Reg. 43780 (Sept. 22, 1992). The paradigm shift from systems owned by individual carriers to systems owned either by non-airline, public companies or multiple airlines renders the Department's principal rationale for the mandatory participation rule -- to ensure that each system would be equally attractive to travel agents in hub cities (see id. at 43800) -- superfluous, as the systems no longer have an inherent business justification for maintaining so-called architecturally-biased system functions designed to favor the system's owner.

airlines to bargain for better terms with the systems,”<sup>6/</sup> while the booking fee rule has led to “burdensome costs” on air carriers and higher airfares for consumers.<sup>7/</sup> The elimination of these rules will enable carriers to negotiate better terms for participating in a vendor’s system, generate competition among the vendors, provide greater market discipline, and create more choices for carriers,<sup>8/</sup> thereby reducing carriers’ distribution costs at a time when every cost saving is critical to the embattled industry.

To extend these harmful and unjustified rules an additional ten months is completely unwarranted, as is the suggestion that the proposed extension will not significantly burden carriers that use CRS services. A ten-month extension of the current rules will needlessly subject carriers to continued excessive costs. At a time when air carriers are reducing costs and restructuring in a literal fight for survival, the Department should not be seeking to extend rules that expose carriers to millions of dollars in excessive costs each year.

By contrast, if the mandatory participation and booking fee rules are allowed to sunset as scheduled, airline competition would not suffer. The two largest of the four CRS vendors -- Sabre and Galileo -- no longer are owned and operated by air carriers or their affiliates. They are public companies that are completely free from and independent of airline control. Moreover, Internet distribution services have entered the market. The total independence of Sabre and Galileo from airline ownership or control, the partial

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<sup>6/</sup> 67 Fed. Reg. 69366, 69394 (Nov. 15, 2002).

<sup>7/</sup> Id. at 69398 (“Since the systems have not needed to compete for airline participants, their booking fees likely exceed their costs of providing CRS services to airlines.”).

<sup>8/</sup> Id. at 69394, 69399-400.

divestiture of Amadeus (which has no U.S. airline ownership), and the broadening of the ownership of Worldspan, coupled with competition from Internet travel distribution alternatives, provides sufficient competitive discipline in the market for distribution services to ensure that all participants in the downstream market for air transportation services will have access to the consumers of those services on fair and reasonable terms without the need to extend rules that are antiquated, harmful, and unnecessarily intrusive.<sup>9/</sup>

The Department apparently feels some reluctance to allow the rules to sunset before it has made a final determination on the issues involved in this proceeding, since carriers and vendors might enter into revised agreements in the new competitive environment that would have to be renegotiated if the Department ultimately decides to reinstate the old rules. That concern is misplaced. There is little chance that the outmoded mandatory participation and booking fee rules would be reinstated. But, even if they were, that would not create undue disruption. Carriers and vendors would simply adjust their contracts as necessary to conform to the reinstated rules with which they already are familiar.

### **CONCLUSION**

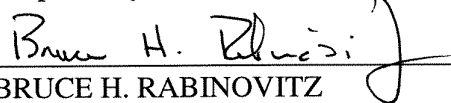
The CRS regulations already have been extended for a considerably longer period of time than they were originally intended to be in effect, and there is no justification for extending them any further. The nondiscriminatory booking fee and mandatory

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<sup>9/</sup> In addition, if the Department believes an air carrier or ticket agent has engaged in anticompetitive conduct after the rules sunset, it can use its ad hoc enforcement authority under Section 41712 to prevent and punish those abuses.

participation rules, in particular, have served no competitive purpose for many years; instead, they serve merely to insulate CRS vendors from market forces and artificially inflate distribution costs for financially strapped carriers. These rules should be allowed to sunset on March 31, 2003, as scheduled, so that the public interest will not be harmed any more than it already has been due to the ill-advised extensions that the Department has implemented in the past.<sup>10/</sup>

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Dated: February 27, 2003


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<sup>10/</sup> If the Department is intent on imposing a further extension of the sunset date, United requests that the Department waive enforcement of the mandatory participation and booking fee rules until final action is taken on the CRS rules. In any event, if the Department believes an extension is necessary to afford it more time to evaluate comments on its November 15, 2002 notice of proposed rulemaking, the extension should be no later than June 30, 2003. Originally, those comments were due January 14, 2003, with reply comments due February 13, 2003, and the current rules were scheduled to expire 45 days later, on March 31, 2003. By notice dated December 9, 2002, the Department extended the deadlines for comments and reply comments to March 16, 2003, and May 15, 2003, respectively, in response to a petition filed by a group of CRS vendors and travel agents with a common interest in extending the status quo for as long as possible. 67 Fed. Reg. 72869 (Dec. 9, 2002). It follows that any extension of the sunset date should end 45 days after the deadline for filing reply comments, as the Department had initially scheduled, i.e., on June 30, 2003.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing Comments of United Air Lines, Inc. on all persons named on the attached Service List by causing a copy to be sent via first-class mail, postage pre-paid.

  
Kathryn Dionne North

**DATED:     February 27, 2003**



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